

MANKO | GOLD | KATCHER | FOX LLP

AN ENVIRONMENTAL AND ENERGY LAW PRACTICE

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Admitted in PA and NJ

February 16, 2018

Via ECF
Judge Renée Marie Bumb
United States District Court District of New Jersey
Mitchell H. Cohen Courthouse
4th & Cooper Streets
Camden, New Jersey 08101
Courtroom: 3D

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PHILADELPHIA, PA
*CHERRY HILL, NJ
WILLIAMSPORT, PA
by appointment only

**Partner responsible – Bruce S. Katcher*

Re: *Cannon, et al. v. Ashburn Corporation, et al.*
Civ. Action No. 1:16-cv-01452-RMB-AMD

Dear Judge Bumb:

I am one of the attorneys representing Defendant Ashburn Corporation d/b/a Wines ‘Til Sold Out and WTSO.com (“WTSO”) in the above-referenced matter. I have attached for filing the Declaration of Danielle Merrill on Behalf of Settlement Administrator Regarding Notice (“Declaration”). The Declaration provides that Kurtzman Carson Consultants (“KCC”), the settlement administrator in this matter, has satisfied the notice requirements to the class members as set forth in Your Honor’s Order Preliminary Certifying Settlement Class, Granting Preliminary Approval of Settlement, and Approving Class Notice, dated November 16, 2017.

Respectfully,



James M. McClammer
For MANKO, GOLD, KATCHER & FOX, LLP

Enclosure

cc: All Counsel (via ECF)

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

KYLE CANNON, LEWIS LYONS, and
DIANNE LYONS, individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

ASHBURN CORPORATION, WINES ‘TIL
SOLD OUT (WTSO.COM), and JONATHAN
H. NEWMAN,

Defendants,

Case No. 16-1452(RMB)(AMD)

**DECLARATION OF
DANIELLE MERRILL ON
BEHALF OF SETTLEMENT
ADMINISTRATOR
REGARDING NOTICE**

I, Danielle Merrill, declare:

1. I am employed as a project manager by Kurtzman Carson Consultants (“KCC”), a nationally-recognized notice and claims administration firm located at 462 South 4th Street, Louisville, KY 40202. KCC was retained as the Settlement Administrator in this case, *Cannon v Ashburn Corporation dba Wines ‘Til Sold Out*. As the project manager, I oversee all aspects of the administrative services provided. I submit this declaration regarding KCC’s administration of notice to the class members regarding the settlement.

2. On November 30, 2017 counsel for Defendants provided KCC with three (3) Microsoft Excel files that contained the names, customer identification numbers, refund information, mailing addresses, and email addresses of 243,830 Settlement Class Members (“Class Members”). KCC reviewed and the data and processed the names and addresses through the United States Postal Service (“USPS”) National Change of Address database. KCC identified and removed nine (9) class member records with no valid physical address and no

email address and eight (8) duplicate class member records. There remained a total of 243,813 class member records with either an email address or a postal address that could be sent notice of the settlement.

3. On December 21, 2017, KCC established a website for this settlement at www.winesettlement.com. On the website, visitors can view answers to frequently asked questions, download important documents that were filed with the Court, including the Revised Settlement Agreement and Release; Order Preliminarily Certifying Settlement Class, Granting Preliminary Approval of Settlement, and Approving Class Notice; Notice of Class Action Settlement; Frequently Asked Questions and Answers; Verification Form, Class Counsel's Brief in Support of Application for Award of Attorneys' Fees and Reimbursement of Expenses; and Order on Defendant's Motion to Dismiss. Visitors of the settlement website could also submit Verification Forms online.

4. On December 21, 2017, KCC established a toll-free telephone number that Class Members could call and listen to answers to Frequently Asked Questions and Answers, request the class notice be sent to them, or speak to a live operator for more information.

5. On December 21, 2017, KCC mailed the Single Postcard Notice to 243,666 Class Members whose physical address was available and sent the Email Notice to 243,710 Class Members whose email address was available. Each of the 243,813 Class Members were sent at least one form of Notice, and those Class Members who had both physical and email addresses available received the two forms of Notice. A true and correct copy of the Email Notice and Postcard Notice are attached as Exhibits "A" and "B," respectively.

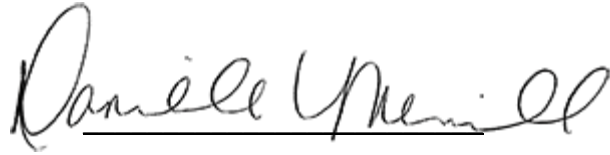
6. To date, KCC has received a total of 1,740 Postcard Notices returned by the U.S. Postal Service with forwarding addresses. KCC updated the Class Member list with the new addresses and re-mailed the Postcard Notice to the updated addresses.

7. To date, KCC has received a total of 17,547 Postcard Notices returned by the U.S. Postal Service without forwarding address information. KCC ran a search for an updated address for Class Members whose Postcard Notice was returned as undeliverable, and updated and re-mailed the Postcard Notice to 14,606 Class Members.

8. The deadline to submit a request for exclusion (“opt-out”) is February 16, 2018. To date, KCC has received 34 timely opt-outs.

9. The deadline to submit a Verification Form is April 19, 2018. To date, KCC has received 36,693 timely Verification Forms submitted online and 11 timely paper Verification Forms by mail. Based on these numbers, approximately 15.05% of the class has submitted Verification Forms. However, some Class Members have submitted multiple Verification Forms. Therefore, the total number of Class Members who have submitted a Verification Form, and the corresponding percentage of the total class, is slightly lower than this total number of Verification Forms received. KCC understands that WTSO is currently identifying all duplicate Verification Forms to calculate the exact number of Class Members who have submitted a Verification Form.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed this February 16th, 2018, at Louisville, Kentucky.

A handwritten signature in black ink, reading "Danielle Merrill". The signature is written in a cursive style with a horizontal line underneath the name.

Danielle Merrill

Exhibit A

Claim ID: <<Claim8>>

PIN: <<PIN>>

Notice of Class Action Settlement

Cannon v. Ashburn Corporation, Civil Action No. 16-1452 (RMB)(AMD)

United States District Court for the District of New Jersey

A settlement has been reached in a class action lawsuit against Defendant Ashburn Corporation, d/b/a “Wines ‘Til Sold Out” and d/b/a WTSO.com (hereinafter WTSO).

What is this case about?

Kyle Cannon, Lewis Lyons, and Dianne Lyons (collectively the “Plaintiffs” in this case) allege that because certain wines were not sold anywhere at the purported “Original Price,” the discount advertised by WTSO was not real, and consumers were not buying wines at a discount. The Plaintiffs further allege that WTSO offered wines that were available elsewhere but that the stated “Original Price” of some of these wines was higher than the price set by the winery itself, resulting in a greater advertised discount than would have existed had Defendant used the winery’s price for such wines.

WTSO maintains that the “Original Price” it advertised was the suggested retail price provided to it when it purchased the wine and was an accurate reflection of the value of the wine it sold. WTSO denies all liability of any kind associated with the claims alleged. WTSO further denies that class certification is appropriate for any purpose other than settlement.

The Court has not decided who is right in this case.

Who is included in the Class?

You are included in this class if you reside (or otherwise live) in the United States and purchased wine from WTSO.com at any point from March 15, 2010 to November 1, 2016 (“Class Period”).

What may I receive from this settlement?

You will receive credits to purchase wine on WTSO.com based on wine purchased during the Class Period if you complete a Verification Form as described below, as follows:

1. For every bottle of wine listed on Exhibit A http://preview.winesettlement.com/media/1240628/04.01_settlement_agreement_and_release-exhibit_a.pdf purchased during the Class Period for \$12.99 or less, the Class Member will receive a credit of \$1.75.

2. For every bottle of wine listed on Exhibit A purchased during the Class Period for \$13.00-\$18.99, the Class Member will receive a credit of \$2.00.
3. For every bottle of wine listed on Exhibit A purchased during the Class Period for \$19.00 or greater, the Class Member will receive a credit of \$2.25.
4. For every bottle of wine listed on Exhibit B http://preview.winesettlement.com/media/1240631/04.01_settlement_agreement_and_release-exhibit_b.pdf purchased during the Class Period for \$19.99 or less, the Class Member will receive a credit of \$0.50.
5. For every bottle of wine listed on Exhibit B purchased during the Class Period for \$20.00 or greater, the Class Member will receive a credit of \$0.75.
6. For every bottle of wine not listed on Exhibit A or B purchased during the Class Period, the Class Member will receive a credit of \$0.20.

You will not receive a credit for any bottle of wine for which you received a refund. Credits will be good for one year from the date you receive an email with a code for your Credits. Credits will be applied against purchases of any wine the first time it is offered on WTSO.com (with limited exceptions), and on certain other identified wines offered on WTSO.com, at the rate of \$2.00 off per bottle, or for the full or remaining credit amount if less than \$2.00. WTSO will identify on its website which wines are eligible for credit use.

Has WTSO made changes to its advertising?

After the lawsuit was filed, on or about November 2, 2016, Defendant replaced the advertising term “Original Price” with the term “Comparable Price” on the WTSO.com website and included a definition of “Comparable Price” to mean “the price at which the same or a similar wine with the same primary grape varietal and appellation or sub-appellation has been offered for sale to consumers directly by a producing winery or through retailers.”

What are my options?

1. Remain in the Class and Receive a Credit

You do not have to do anything to remain in the Class. However, if you wish to receive a credit as described above, you must complete the Verification Form [link to form]. If you received more than one Notice at different email addresses, you must complete the Verification Form for each email address that the Notice was sent to in order to obtain all of your Credits.

If the settlement is approved by the Court and you have completed the Verification Form(s), you will receive a unique non-transferable code that you may use on the WTSO.com website to access your Credits. The Verification Form for each email address at which you received a Notice must be completed and submitted no later than **April 19, 2018** in order to obtain all of your Credits. If you do not complete a Verification Form for any email address at which you received a Notice, you will not obtain the Credits for purchases made under that email address. You will receive the Code and be able to use it 40 days after the Settlement is final.

If you remain in the Class, you release and give up your right to file a lawsuit against WTSO and its related agents and entities relating to WTSO's selling, marketing and advertising of wine during the Class Period. The precise terms of the release are set forth in the Settlement Agreement. Unless you exclude yourself from this Settlement, as described below, you will release your claims whether or not you submit a Verification Form and receive a credit.

2. Exclude Yourself from the Settlement

If you do *not* wish to be included in the settlement, you have the right to opt out of the class.

If you decide to opt out of the Class, you:

- (i) **Will not receive any credits for the purchase of wine on WTSO.com;**
- (ii) will not be bound by any orders or judgments entered in this Action;
- (iii) will not be entitled to relief under, or be affected by, this Settlement;
- (iv) will not gain any rights by virtue of this Settlement; and
- (v) will not be entitled to object to any aspect of this Settlement.

To opt out of the Class, you must mail a letter clearly stating your desire to opt out to the Settlement Administrator by **February 16, 2018**. If you have opted out and wish to revoke your request for exclusion from the Class, you may do so by mailing a letter stating clearly the desire to revoke the previous request for exclusion to the Settlement Administrator before the opt out deadline at Cannon v. Ashburn Corporation d/b/a Wines 'Til Sold Out Class Action Settlement, P.O. Box 404041, Louisville, KY 40233-4041.

3. Object to the Settlement

If you wish to be part of the proposed Settlement but want to object to all or any part of the Settlement, you must do so by **February 16, 2018**. **You must remain a member of the Class in order to object to any aspect of the proposed Settlement.** Objections must be filed with the Court at:

Clerk of the Court
United States District Court for the District of New Jersey
4th & Cooper Streets
Camden, NJ 08101

and mailed to the following:

Oren Giskan
Giskan Solotaroff & Anderson
217 Centre Street, 6th Floor
New York, New York 10013

Suzanne Ilene Schiller
Manko, Gold, Katcher & Fox, LLP
401 City Avenue, Suite 901
Bala Cynwyd, PA 19004

Your written objection must include: Any objections must include (i) your full name and current address and telephone number; (ii) the identification of at least one wine purchased from WTSO.com; (iii) a description of all of your objections, the specific reasons for these objections, and any and all supporting papers, including, without limitation, all briefs, written evidence, and declarations; and (iv) your signature.

The final approval hearing (the “Fairness Hearing”) will be on **March 19, 2018** at 10:00a.m., at the United States District Court for the District of New Jersey, 4th and Cooper Streets, Courtroom 3D. You do not have to go to Court or hire an attorney but you may if you want to, at your own cost. The Fairness Hearing is for the Court to decide (a) whether to approve the Settlement; (b) Class counsel’s requests for attorneys’ fees and expenses; and (c) the service award for the Class representatives in this case.

If you wish to appear either personally or through counsel at the Fairness Hearing to present your objections to the Court orally you must include a written statement of intent to appear at the Fairness Hearing by **February 16, 2018**. Only if you specify in your objections that you intend to appear personally or through counsel at the Fairness Hearing will you have the right to present your objections orally at the Fairness Hearing. If you do not submit timely written objections you will not be permitted to present your objections at the Fairness Hearing.

If you file objections but the Court approves the Settlement as proposed, you will still be eligible for your share of the settlement relief.

Who are the attorneys representing the Class?

The Court has appointed the lawyers listed below to represent you and the Class (“Class counsel”):

Oren Giskan
GISKAN SOLOTAROFF &
ANDERSON LLP
217 Centre Street, 6th Floor
New York, NY 10013

James E. Cecchi
CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO, P.C.
5 Becker Farm Road
Roseland, NJ 07068

Thomas Rosenthal
LAW OFFICES- THOMAS
ROSENTHAL
45 Main Street #1030
Brooklyn, NY 11201

Edward Hernstadt
HERNSTADT ATLAS PLLC
45 Main Street #1030
Brooklyn, NY 11201

You do not have to hire your own lawyer but you may if you want to, at your own cost.

Will payments be made to Class Counsel or the Class Representatives?

The determination of an attorney fee award is made by the Court, which will determine a reasonable fee for the work done and the result obtained by Class counsel. Class counsel will ask the Court to award attorneys' fees and expenses of no more than \$1.7 million.

Class counsel will also seek \$2,500 for each Class Representative in recognition of their assistance in this litigation.

Where can I get additional information?

THIS IS ONLY A SUMMARY OF THE SETTLEMENT. For more information regarding your rights and options, you can visit the Settlement website: www.winesettlement.com or contact the Settlement Administrator at:

Cannon v. Ashburn Corporation d/b/a Wines
'Til Sold Out Class Action Settlement
P.O. Box 404041
Louisville, KY 40233-4041

You may also contact Class Counsel at the following address:

Oren Giskan
GISKAN SOLOTAROFF & ANDERSON LLP
217 Centre Street, 6th Floor
New York, NY 10013
ogiskan@gsllawny.com

Exhibit B

Wine Settlement Corporation d/b/a Wine
'Til Sold Out Class Action Settlement
P.O. Box 404041
Louisville, KY 40233-4041

2D

IMPORTANT
LEGAL NOTICE FROM
THE UNITED STATES
DISTRICT COURT
FOR THE
DISTRICT
OF NEW JERSEY

VISIT
WWW.WINESETTLEMENT.COM
FOR MORE INFORMATION



Postal Service: Please Do Not Mark Barcode

AUA-<<Claim8>>-<<CkDig>>

Claim ID: <<Claim8>>

PIN: <<PIN>>

<<FName>> <<LName>>

<<Addr1>> <<Addr2>>

<<City>>, <<State>> <<Zip>>

AUA

Description of the Class Action Lawsuit and Settlement: Plaintiffs allege that because certain wines were not sold anywhere at the purported “Original Price,” the discount advertised by WTSO was not real, and consumers were not buying wines at a discount. The Plaintiffs further allege that WTSO offered wines that were available elsewhere but that the stated “Original Price” of some of these wines was higher than the price set by the winery itself, resulting in a greater advertised discount than would have existed had Defendant used the winery’s price for such wines. WTSO maintains that the “Original Price” it advertised was the suggested retail price provided to it when it purchased the wine and was an accurate reflection of the value of the wine it sold. WTSO denies all liability of any kind associated with the claims alleged.

The Court has not decided who is right in this case. Instead, the parties have reached a settlement that provides up to \$10.8 million in Credits towards future purchases of wine on WTSO.com to Class Members who Verify that they purchased wine from WTSO.com.

The Court will hold a hearing at the Courthouse in Camden NJ on **March 19, 2018** to consider whether to approve the settlement.

Purpose of This Notice: The purpose of this notice is to inform you of the lawsuit and settlement so that you may decide to 1. support the settlement and submit an online Verification Form to receive your Credits; 2. object to the settlement; or 3. Exclude yourself from the settlement (“opt out”) and reserve all claims you may have.

Are you in the Class? You are included in this class if you reside (or otherwise live) in the United States and purchased wine from WTSO at any point from March 15, 2010 to November 1, 2016 (“Class Period”). If you are a Class Member, your rights may be affected, even if you take no action.

Settlement Benefits: The Settlement provides a total of up to \$10.8 million in Credits. If you verify that you purchased wine from WTSO by **April 19, 2018**, you will receive a Credit of between \$0.20 and \$2.25 for each bottle of wine purchased during the Class Period. The allocation of Credits is more fully described at www.winesettlement.com. You will not receive any Credits for any bottle of wine for which you received a refund. If you receive more than one mailed Notice, it may be because you have used more than one email address in connection with your purchases and as a result, have been assigned more than one Claim Number. You must complete the Verification Form for each Claim Number you have been assigned in order to obtain all of your Credits.

Where to Get Additional Information: A website, www.winesettlement.com, has been established where you can Verify your purchase of wine and review additional information regarding the Settlement and the lawsuit. You can also obtain more information and a Verification Form by calling **1-866-652-8231** or writing to the Settlement Administrator at Cannon v. Ashburn Corporation d/b/a Wines ‘Til Sold Out Class Action Settlement, P.O. Box 404041, Louisville, KY 40233-4041. The website describes how to object or exclude yourself from the Settlement. The DEADLINE to object or exclude yourself from the Settlement is **February 16, 2018**. The DEADLINE to mail or complete the Verification Form online is **April 19, 2018**.

Questions? Call **1-866-652-8231** or visit www.winesettlement.com